

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

GARRY SEAY,)
Petitioner,)
vs.) No. 1:07-cv-1393-DFH-TAB
)
EDDIE BUSS,)
)
Respondent.)

Entry Discussing Petition for Writ of Habeas Corpus

Garry Seay ("Seay") seeks a writ of habeas corpus with respect to a prison disciplinary proceeding identified as No. CIC 06-08-133. Similar relief was sought by Seay in a previous habeas action recently concluded in the Northern District of Indiana. *Seay v. Buss*, 2008 WL 534708 (N.D.Ind. February 22, 2008) (*Seay I*).

Rule 4 of the *Rules Governing Section 2254 Cases in United States District Courts* provides that upon preliminary consideration by the district court judge, "[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified." See *Small v. Endicott*, 998 F.2d 411, 414 (7th Cir. 1993).

This is an appropriate case for the resolution of the action pursuant to Rule 4. The reasons for this conclusion are the following: Any claim in the present case either was or could have been asserted in *Seay I*. *Seay I* was adjudicated on the merits. This means that the present action must be dismissed for lack of jurisdiction as an unauthorized second or successive habeas application. *Harris v. Cotton*, 296 F.3d 578, 579 (7th Cir. 2002) (section 2244(b) of 28 U.S.C. applies to § 2254 petitions challenging sanctions imposed in prison disciplinary proceedings); see also *Burton v. Stewart*, 127 S. Ct. 793, 796 (2007) (stating that the district court was without jurisdiction to entertain the habeas petition because the petitioner failed to receive the required authorization from the Court of Appeals and had "twice brought claims contesting the same custody imposed by the same judgment of the state court."); *United States v. Lloyd*, 398 F.3d 978, 979 (7th Cir. 2005).

Based on the foregoing, the petition shows on its face that the petitioner is not entitled to the relief he seeks. Accordingly, the action must be dismissed for lack of jurisdiction, and judgment consistent with this Entry shall now issue.

So ordered.



DAVID F. HAMILTON, Chief Judge
United States District Court

Date: 3/13/2008